

Nebraska Law Review

Volume 33 | Issue 4

Article 15

1954

Creditors and the Nebraska Statutes

Robert H. Berkshire

University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Robert H. Berkshire, *Creditors and the Nebraska Statutes*, 33 Neb. L. Rev. 646 (1953)

Available at: <https://digitalcommons.unl.edu/nlr/vol33/iss4/15>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Creditors and the Nebraska Statutes

The interests of creditors in their debtor's property have been protected since *The Statute of 13 Elizabeth*¹ and *Twyne's Case*,² but the problem as to which creditors are protected has resulted in varied and conflicting results, depending upon the transaction involved, the wording of the statute, and the interpretation of the statute by the court. Whether a creditor falls within the meaning of the particular statute usually depends upon when he became a creditor, and whether he has a lien by attachment or execution. Statutes protecting creditors by giving them rights in their debtor's property can be divided into two classes: (1) Where the debtor has possession of the property but not the title, and (2) Where the debtor transfers possession and title to defraud creditors.

¹ 13 Eliz., c. 5 (1570).

² *Star Chamber* (1601). 3 Coke, 80b, 76 Eng. Rep. 809.

A. Possession But Not Title

Because all of the transactions to be discussed are covered by statutes which vary in many states, there is no general American rule. This comment will cover primarily personal property in Nebraska under the Nebraska statutes.

Statutes which void transactions where the debtor has possession of the property but not the title have been based on theory of apparent ownership.³ This theory applies to existing creditors because they may delay in pressing their claims by not knowing the true nature of the transaction, and thus be harmed; and to subsequent creditors because they may rely upon the apparent ownership of the property in the debtor, and thus become creditors when they would not have done so if they had known the debtor did not have title. However, it is impossible to generalize and give a single definition of "creditors" when considering the problem of the debtor having possession but not title. Although the legislature has attempted to define what creditors fall within the meaning of each statute, the courts have often changed the meaning for policy reasons.

Sales

Section 36-204⁴ makes all sales without change of possession and immediate delivery of the property presumptively fraudulent as to creditors of the vendor. 36-205⁵ defines creditors as used in 36-204 as all persons who shall be creditors of the vendor at any time while the goods remain in his possession.

It has been held that it is immaterial whether the person becomes a creditor before or after the sale, so long as the vendor is still in possession.⁶ In giving this interpretation to the statute, the Nebraska Court recognized that statutes merely give effect to the common law and the interpretation given by the majority of the other states. Even though the basis for protecting creditors is the statute of 13 Eliz, c. 5 (1570), the court argues that the common law would have reached the same result eventually for the object of the common law in such cases is to protect both antecedent and subsequent creditors.⁷

However, the Nebraska Supreme Court has defined creditors as creditors who have acquired a lien, either by levy of an attachment or execution on a judgment before delivery of possession to the vendee.⁸

³ 1 Glenn, *Fraudulent Conveyances and Preferences* § 348 (Rev. ed. 1940).

⁴ Neb. Rev. Stat. (Reissue 1952).

⁵ Neb. Rev. Stat. (Reissue 1952).

⁶ *Densmore v. Tomer*, 14 Neb. 392, 15 N.W. 734 (1882).

⁷ *Id.* at 395, 15 N.W. at 735.

⁸ *Neely v. Trautwein*, 79 Neb. 751, 113 N.W. 141 (1907); *Dexter v. Citizens' Nat. Bank*, 4 Neb. (unof.) 380, 94 N.W. 530 (1903); *Snyder v. Dangler*, 44 Neb. 600, 63 N.W. 20 (1895); *Wake v. Griffin*, 9 Neb. 47, 2 N.W. 461 (1879); *Robinson v. Uhl*, 6 Neb. 328 (1877).

This allows the presumption of fraud to be raised only by a diligent creditor who is actively seeking satisfaction of his claim by obtaining a levy of execution or attachment upon the property. Authorities reason that this is a just result because "... the relation of debtor and creditor expresses nothing but the right to use the courts; for the creditor to sue to judgment; the debtor, to defend on merits. The creditor, as such, has no interest in his debtor's property that any court of law will recognize."⁹

While in a sense this is circular reasoning, it also expresses a fundamental concept that the creditor achieves no interest in his debtor's property until he exercises some right by operation of law. Also it appears that between an inactive creditor and a negligent buyer, the equities are not as disproportionate as between a diligent creditor and a negligent buyer. This disparity of equities gives the court a valid justification for protecting only creditors who have secured a levy by attachment or judgment.

Good faith on the part of the creditor is not a requirement, but in view of the policy behind the statute, there appears to be no reason to protect a creditor who has knowledge of a conveyance and does not actively seek to protect his interest in the debtor's property. Since the conveyance is presumptively fraudulent, and the final determination of the effect of the transaction is a fact question, a creditor's knowledge of the nature of the transaction would certainly be a consideration in determining the validity of the creditor's claim.

Chattel Mortgages

36-204¹⁰ makes every mortgage without change of possession and immediate delivery of the goods presumptively fraudulent as to creditors of the mortgagor. 36-301¹¹ makes a chattel mortgage absolutely fraudulent unless it is recorded.

Since 36-204 applies to chattel mortgages as well as sales, the definition of creditors in 36-205 should apply to chattel mortgages also. Just as in a sales transaction, the creditor must have acquired a lien or charge on the property by levy or other judicial process.¹² The credi-

⁹ Glenn, *Fraudulent Conveyances and Preferences* § 9, § 349 (Rev. ed. 1940); See also Williston, *Sales* § 350 to § 353, § 380 (Rev. ed. 1948).

¹⁰ Neb. Rev. Stat. (Reissue 1952).

¹¹ Neb. Rev. Stat. (Reissue 1952).

¹² *Forrester v. Kearney Nat. Bank*, 49 Neb. 655, 68 N.W. 1059 (1896). Also, *Oleson v. Pumphrey*, 125 Neb. 708, 251 N.W. 828 (1933); *Folsom v. Peru Plow & Impl. Co.*, 69 Neb. 316, 95 N.W. 635 (1903) (specific lien); *Meyer v. Miller*, 51 Neb. 620, 71 N.W. 315 (1897); *Spaulding v. Johnson*, 48 Neb. 830, 67 N.W. 874 (1896); *Farmers & Merchants Bank of York v. Anthony*, 39 Neb. 343, 57 N.W. 1029 (1894); *Sherwin v. Gaghagen*, 39 Neb. 238, 57 N.W. 1005 (1894); *Kay v. Noll*, 20 Neb. 380, 30 N.W. 269 (1886); *Fitzgerald v. Andrews*, 15 Neb. 52, 17 N.W. 370 (1883); see *Burke v. Frederickson*, 131 Neb. 548, 268 N.W. 348 (1936). Although dicta indicates that a judgment is sufficient, in *Reiss v. Argubright*,

tor's lien must be acquired either before transfer of possession from the mortgagor to the mortgagee or before the filing of the mortgage.¹³

Even if the mortgage is recorded, it is still *prima facie* fraudulent as to creditors of the mortgagor if there is no immediate change of possession. The presumption, however, may be overcome by evidence of good faith.¹⁴ The rationale is that filing is not the equivalent to change of possession and that there is no statutory duty to file immediately. Thus under 36-204 a creditor is not without remedy though a chattel mortgage is registered, and the burden of proving that the mortgage is not fraudulent is upon the chattel mortgagee.¹⁵

The effect upon the rights of creditors of a delay in filing the chattel mortgage has raised some conflicts in the law. One problem is what creditors gain rights by a delay in filing a chattel mortgage. The most liberal view is the *Karst v. Gane*¹⁶ doctrine. This view argues that an unnecessary delay in filing a chattel mortgage and obtaining possession of the property by the mortgagee renders the mortgage void, not only to creditors of the mortgagor who became such after the giving of the mortgage, but also, as to those whose debts were contracted before that time, despite the fact they did not reduce their claims to judgments, and seize the mortgaged chattels until after the mortgage was placed upon record or possession of the property was obtained by the mortgagee.

Another view is that the chattel mortgage is void as to creditors of the mortgagor who became such after the execution of the mortgage, and before its filing or the taking of possession of the property by the mortgagee, and to such preexisting creditors who have prejudiced their rights because of the non-existence of the mortgage.¹⁷

The Nebraska Court declined to follow either of these views when it interpreted the chattel mortgage statute. Instead the court held, except in cases where there was other evidence of intent to defraud, that the mortgage was not void because of mere delay in filing. The court stated that the legislature intended recording to protect only judgment creditors. Therefore, other creditors receive no protection

3 Neb. (unof.) 756, 92 N.W. 988 (1902) and *First Nat. Bank v. Young*, 124 Neb. 598, 247 N.W. 586 (1933), the Court relied upon *Farmers & Merchants Bank of York v. Anthony*, supra, which required a levy and is explained in *Forrester v. Kearney Nat. Bank*, supra, at 663.

¹³ *Forrester v. Kearney Nat. Bank*, supra note 12; *Farmer & Merchant Nat. Bank v. Anthony*, supra note 12; *Spaulding v. Johnson*, supra note 12; *Fitzgerald v. Andrews*, supra note 12.

¹⁴ *Marsh v. Burley*, 13 Neb. 261, 13 N.W. 279 (1882); see *Pyle v. Warren*, 2 Neb. 241, 252 (1873).

¹⁵ *Sherwin v. Gaghagen*, 39 Neb. 238, 57 N.W. 1005 (1894).

¹⁶ 136 N.Y. 316, 32 N.E. 1073 (1893).

¹⁷ *Union Nat'l. Bank v. Oium*, 54 N.W. 1034 (N.D. 1892); *Root v. Hari*, 62 Mich. 420, 29 N.W. 29 (1886).

under the statute.¹⁸ This also reflects the reluctance of the court in these early decisions to do anything to aid creditors who were not active in seeking satisfaction of their claims against the debtor.¹⁹

This theory is further supported by the Nebraska Court's holding that if there was an agreement between the mortgagor and the mortgagee not to file, then the mortgage is void only to the extent the creditors have been damaged by the agreement.²⁰ The basis for this is that the only action available to the creditor is for fraud. Fraud is a tort, and in order to recover for a tort, one must prove damage.²¹ Thus while there are few equities with a mortgagee who agrees not to record, the Nebraska Court is reluctant to aid creditors who have not been diligent.

Good faith on the part of the creditor is not a factor under the recording act (36-301). Thus if a chattel mortgage is not filed, the creditor obtaining a levy by attachment or judgment having knowledge of the existence of the unrecorded chattel mortgage,²² or the purchaser at an execution sale with similar notice,²³ prevails over the chattel mortgagee. The reasoning of these holdings is that the mortgage is invalid per se as to creditors, and thus the creditor's knowledge is not a factor.²⁴ But if the creditor with the notice of the unrecorded mortgage becomes a purchaser of the property in settlement of the debt instead of obtaining a lien by levy of attachment or execution prior to the filing of the chattel mortgage, then the creditor takes subject to the mortgage. The Court reasoned that the creditor is entitled to special protection and may assault the mortgage "with the weapons of the law." "But when he descended into the arena to barter, and sought to become a purchaser, then it was necessary that he be clothed with good faith . . . (and not know of the existence of the chattel mortgage)."²⁵ Therefore it is extremely dangerous for a creditor to take a chattel without obtaining a lien by judicial process when he knows of the unrecorded chattel mortgage, for he will then be impairing his position in relation to other creditors and the unrecorded chattel mortgagee.

¹⁸ *Forrester v. Kearney Nat. Bank*, 49 Neb. 655, 68 N.W. 1059 (1896).

¹⁹ *Id.* at 662, 68 N.W. at 1061.

²⁰ *Mattley v. Wolfe*, 175 Fed. 619 (D.C. Neb. 1909); *First Nat. Bank v. Toler-ton & Stetson*, 5 Neb. (unoff.) 43, 97 N.W. 248 (1903); *Carpenter Paper v. News Pub. Co.*, 63 Neb. 59, 87 N.W. 1050 (1901); *Ackerman v. Ackerman*, 50 Neb. 54, 69 N.W. 388 (1896).

²¹ *Carpenter Paper Co. v. News Pub. Co.*, *supra* note 20 at 63, 87 N.W. at 1051.

²² *Hillebrand v. Nelson*, 1 Neb. (unof.) 783, 95 N.W. 1068 (1901) (Chattel mortgage filed under real estate mortgages held not valid as to creditors.); *Farmers & Merchants Bank of York v. Anthony*, 39 Neb. 343, 57 N.W. 1029 (1894).

²³ *Johns v. Karmard*, 2 Neb. (unof.) 157, 96 N.W. 118 (1901) (Purchaser with notice of mortgage at execution sale prevails over the mortgagee.)

²⁴ *Farmers & Merchants Bank of York v. Anthony*, 39 Neb. 343, 57 N.W. 1029, 1030 (1894).

²⁵ *Earle v. Burch*, 21 Neb. 702, 709, 33 N.W. 254, 257 (1887).

What other judicial processes are sufficient to establish a lien is a question that has raised controversy. Creditors who before filing of a chattel mortgage force the debtor into bankruptcy, prevail over the mortgagee through the trustee in bankruptcy. The Federal Bankruptcy Act gives the trustee all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied.²⁶ This was so held even before the express power was granted by statute.²⁷ However, the administrator of the estate of a deceased chattel mortgagor, even though the administrator holds the property for the benefit of creditors, does not prevail over a chattel mortgagee who recorded his lien subsequent to the appointment of the administrator.²⁸ The Court reasoned that a creditor has nothing until his claim has been adjudicated and allowed.²⁹ One might reply that an attachment creditor does not have an accepted claim that has been adjudicated and allowed either, and yet the court has ruled that the attaching creditor prevails over the unrecorded chattel mortgagee.³⁰ The basis for this distinction between the status of the trustee in bankruptcy and that of the administrator of an estate in probate proceedings can be rationalized, however, by other policy factors.

Conditional Sales

36-207³¹ provides that a conditional sale of personal property is not valid as to any "judgment" creditor without notice, unless a copy is recorded. It also states that the contract ceases to be valid at the expiration of five years from the date of the sale as to "attaching and judgment" creditors without notice, unless recorded and kept valid by an annual refile.

The fact that the first part of the statute referred only to "judgment" creditors and the latter part of the statute referred to "judgment and attaching" creditors prompted Professor Hanna to observe "the draftsmanship of the 1877 statute (36-207) will never be used as a model by a legislative drafting bureau even if its meaning is not wholly incomprehensible . . ."³² The Nebraska Court has held that the statute not

²⁶ 64 Stat. 23 (1950); 11 U.S.C. § 110(c) (as amended to March 1950), but see 66 Stat. 430 (1952); Hanna, *MacLachlan Bankruptcy Act* § 70(c) (5th ed. 1953); see also *Rankin v. Cox*, 71 F.2d 56 (8th Cir. 1934) (application of the act to a fraudulent conveyance.); *In re Herkimer Mills*, 39 F.2d 625 (N.D. N.Y. 1930) (chattel mortgage); *Slosburg v. Hunter*, 136 Neb. 327, 285 N.W. 563 (1939).

²⁷ *In re Perkin Plow Co.*, 112 Fed. 308 (8th Cir. 1901).

²⁸ *Folsom v. Peru Plow Impl. Co.*, 69 Neb. 316, 95 N.W. 635 (1903).

²⁹ *Id.* at 319, 95 N.W. at 636.

³⁰ See note 13 *supra*.

³¹ Neb. Rev. Stat. (Reissue 1952).

³² Hanna, *Nebraska Law on Conditional Sales*, 10 Neb. L. Bull. 141, 154 (1931).

only protects judgment creditors, but attachment creditors as well, basing its decision on legislative intent and the rule that the statute should be read together. It refused to rest its decision on the theory that the attaching creditor later became a judgment creditor retroactive to the date of attachment.³³ Here too, it is necessary that a lien be acquired by levy of attachment or execution.³⁴

Williston says the general rule is that a creditor must have a lien prior to filing.³⁵ However, this rule has been criticized on the ground that the only creditors who should be protected by the recording statute are those who extended credit on the apparent ownership of the goods, such creditors often have not perfected their lien prior to filing of the conditional sale. Prior creditors with a lien need not prevail unless one adopts the fiction that they delayed in enforcing their claims on the basis of the apparent ownership of the new goods by the debtor. It is true that the creditor who has obtained a lien by levy or attachment has been vigilant and active and should have a preference over creditors who have no liens, but it is doubtful that he should have priority over the conditional seller who has something more than a lien, namely a reservation of title for the purposes of security.³⁶

The Nebraska Court has required that the creditor show injury from the delay in the recording of the conditional sales agreement.³⁷ It has further held that general creditors do not have an interest in the debtor's property and, therefore, are not in the class of persons intended to be protected by the statute.³⁸ The result of the Nebraska holdings appears generally to give only those creditors who extend credit subsequent to the conditional sale and who have obtained a lien by levy of execution or attachment prior to recording of the agreement a claim on the property. The burden upon an antecedent creditor of proving damage by the unrecorded conditional sale to the debtor appears too great to give him much protection under the statute. The Nebraska rule is more equitable than that allowing antecedent creditors to prevail, but works a hardship on subsequent general creditors.

³³ *Peterson v. Tufts*, 34 Neb. 8, 51 N.W. 297 (1892).

³⁴ *Wilson v. Lewis*, 63 Neb. 617, 88 N.W. 690 (1902); see also, *Johns & Sandy v. Reed*, 77 Neb. 492, 109 N.W. 738 (1906); *Starr v. Dow*, 77 Neb. 172, 108 N.W. 1065 (1906); *Campbell Printing Press & Mfg. Co. v. Dyer*, 46 Neb. 830, 65 N.W. 904 (1896).

³⁵ Williston, *Sales*, § 327(a) (Rev. ed. 1948).

³⁶ 2A Uniform Laws Ann., Bogert, *Commentaries on Conditional Sales* § 58 (1924). The Uniform Conditional Sales Act, which has not been passed in Nebraska, takes the position in § 5 that the conditional sale shall be void to any creditor who buys or obtains an attachment or levy of a lien upon the goods if the contract is not filed within ten days after making the sale.

³⁷ *Wilson v. Lewis*, 63 Neb. 617, 88 N.W. 690 (1902).

³⁸ *Johns & Sandy v. Reed*, 77 Neb. 492, 109 N.W. 738 (1906).

Knowledge on the part of the creditor should defeat his right to avoid the contract whether recorded or not.³⁹

Motor Vehicles

60-110⁴⁰ states that any mortgage, trust receipt, or conditional sales contract covering a motor vehicle, if such instrument is accompanied by a manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of said instrument or notation made on the certificate of title by the county clerk, shall be valid as against creditors of the mortgagor, whether armed with process or not.

This system of registering liens on a certificate of title by the county clerk is similar to the ill-fated Torrens system of land recording⁴¹ but a more workable plan for motor vehicles. While levy by attachment or execution does not appear to be necessary, the Nebraska Court, in holding that a chattel mortgage registered one day after the levy of attachment was a subsequent lien to the sheriff's levy, placed emphasis on the date of the levy:

The notation of the mortgage . . . was not made on the certificate of title of the truck until one day after the levy of execution thereon. It was, because of this fact, void as to creditors of the mortgagor.⁴²

Apparently the lien was acquired by an antecedent creditor whose debt matured one month after the unrecorded mortgage was made, but the court did not discuss this point. Because recordation on the instrument is the important element of securing valid title, good faith by a creditor in such a case is not important.

B. Transfer of Title and Possession

Fraudulent Conveyances

36-401⁴³ provides that conveyances or assignments of an estate or interest in lands, or in goods or things in action made with intent to hinder, delay, or defraud creditors of their lawful right, debts, or demands as against the person to hindered, delayed, or defrauded, shall be void.⁴⁴

³⁹ Note that even though Nebraska has not passed the Uniform Conditional Sales Act, that § 36-207 gives creditors nearly as much protection by statute as § 5 of the Conditional Sales Act.

⁴⁰ Neb. Rev. Stat. (Reissue 1952).

⁴¹ The Torrens land recording system act was passed by the Nebraska legislature in 1915, but the system was not used by landowners and the act was repealed in 1943.

⁴² *Alliance Loan & Inv. Co. v. Morgan*, 154 Neb. 745, 747, 49 N.W.2d 593, 594 (1951).

⁴³ Neb. Rev. Stat. (Reissue 1952).

⁴⁴ It is not within the scope of this comment to discuss the types of conveyances and transfers which fall within this statute, nor the remedies of the creditors who come within its protection.

This section has been interpreted to include all creditors who are harmed thereby, whether their claims are reduced to judgment or not,⁴⁵ thus giving effect to the plain meaning of the statute. The theory upon which the creditor prevails is of an equitable nature. The Nebraska Court explained:

A debtor, while the owner of his property, sustains two relations in regard to it, viz., as owner and as quasi-trustee for his creditors. If his creditors have taken no lien upon the property as security, they may be said to have given him credit upon his implied agreement that his property shall, if necessary, be applied to the payment of his debts, and such creditors have an equitable lien upon the property for that purpose.⁴⁶

Thus an equitable lien then prevails over the holder of the legal title and possession of these goods if they were conveyed fraudulently. Subsequent creditors may be protected if they can prove that the transfer was made to defraud subsequent creditors whose debts were in contemplation at the time of the transfer, and that they were actually defrauded thereby.⁴⁷ The burden is on the creditors to make the showing of fraud and a subsequent creditor faces a difficult battle in proving fraud in these cases.

Since it is necessary that the creditor be harmed by the transfer, one who is a secured creditor is not within the meaning of the statute;⁴⁸ but if he is only partially secured creditor by an unsatisfied mortgage, he is an existing creditor and will have standing to attack the transfer.⁴⁹

A contingent creditor, such as a depositor with a claim against the stockholder of a bank for the amount of his stock, can avoid the conveyance when the contingency occurs.⁵⁰ The Court reasoned that when the stockholder becomes the contingent debtor in an attempt to gain profit, he should also bear the risk of loss and not be able to dispose of his property fraudulently. There is dicta in the case broad enough to indicate that even an accommodation indorser or an uncompensated surety comes within the scope of the act if the contingency arises;⁵¹ however the express question has not yet been decided in Ne-

⁴⁵ *In re Bicknell*, 48 F.Supp. 895 (D.C. Neb. 1943), *aff'd* *Epp v. Bicknell*, 138 F.2d 735 (5th Cir. 1943), cert. denied, 321 U.S. 766 (1944); *Goodman-Buckley Trust Co. v. Poulos*, 124 Neb. 697, 248 N.W. 64 (1933); *Beels v. Flynn*, 28 Neb. 575, 44 N.W. 732 (1890); 3 Williston, Sales § 642 (Rev. ed. 1948).

⁴⁶ *Beels v. Flynn*, *supra* note 43 at 580, 44 N.W. at 733.

⁴⁷ *Big Horn Collieries Co. v. Roland*, 116 Neb. 846, 219 N.W. 233 (1928); *Jayne v. Hymer*, 66 Neb. 785, 92 N.W. 1019 (1902); *Ayers v. Wolcott*, 66 Neb. 712, 92 N.W. 1036 (1902); *Racek v. First Nat. Bank of North Bend*, 62 Neb. 669, 87 N.W. 542 (1901); *Graham v. Estate of Townsend*, 62 Neb. 364, 87 N.W. 169 (1901).

⁴⁸ *In re Bicknell*, *supra* note 41.

⁴⁹ *Lincoln Savings & Loan v. Mann*, 129 Neb. 26, 260 N.W. 559 (1935); *Christensen v. Smith*, 123 Neb. 388, 243 N.W. 118 (1932).

⁵⁰ *Luikart v. Detweiler*, 133 Neb. 614, 276 N.W. 395 (1937); *Peterson v. Wahlquist*, 125 Neb. 247, 249 N.W. 678 (1933); see 89 A.L.R. 747 (1934).

⁵¹ *Peterson v. Wahlquist*, *supra* note 50 at 251, 249 N.W. at 680.

braska. The claim may be unliquidated, as well as unmatured. Thus an administrator became a creditor within the meaning of 36-401 from the date of the debtor's tort resulting in the wrongful death of the decedent.⁵²

Trusts

36-201⁵³ provides that transfers of goods, chattels, or things in action made in trust for the use of the person making the same shall be void as against creditors, existing or subsequent, of such person.

There have been very few decisions defining the creditors within the scope of conveyances made in trust. However, the Nebraska Court has held that such a transfer is void as to all creditors, whether prior or subsequent.⁵⁴ The facts of the cases cited also indicate that general creditors fall within the statute.

Bulk Sales Act

36-501⁵⁵ provides that a sale of a stock of goods not in the ordinary course of trade is void against creditors of the seller unless they are notified as provided in the statute.

The buyer has a duty only to those general creditors to whom the seller is indebted at the time of the transfer or to whom he may be expected to owe money.⁵⁶ It appears that this notice should be sufficient to warn all interested in the debtor's property of the impending transfer. The debt may be unmatured, and need not arise in the course of the business being sold; nor need the creditor be a creditor for the specific goods being sold.⁵⁷ It is immaterial that the creditor have knowledge of the sale of the stock of goods through other means than the notification provided for in the statute,⁵⁸ unless he does some act which amounts to an estoppel.⁵⁹

The creditor may also be barred by the Statute of Limitations. If he made an unreasonable delay in taking steps to set aside the debtor's conveyance as fraudulent, though the time was less than the Statute of Limitations, and if the grantee relied upon the title to discharge other liens on the property, the creditor will not prevail.⁶⁰

⁵² *Evers v. Evers*, 146 Neb. 104, 18 N.W.2d 673 (1945).

⁵³ Neb. Rev. Stat. (Reissue 1952).

⁵⁴ *Racek v. First Nat. Bank of North Bend*, 62 Neb. 669, 87 N.W. 542 (1901); *Graham v. Estate of Townsend*, 62 Neb. 364, 87 N.W. 169 (1901).

⁵⁵ Neb. Rev. Stat. (Reissue 1952).

⁵⁶ *Damcus v. Kelly*, 120 Neb. 588, 234 N.W. 416 (1931); *Cech v. Costello*, 117 Neb. 224, 220 N.W. 236 (1928); *Fisher v. Woodward*, 103 Neb. 253, 170 N.W. 907 (1919); *Scheve v. Vanderkolk*, 97 Neb. 214, 149 N.W. 401 (1914); 1 Glenn, *Fraudulent Conveyances and Preferences*, § 315 (Rev. ed. 1940); 3 Williston, *Sales* § 64(a) (Rev. ed. 1948).

⁵⁷ *Damcus v. Kelly*, *Cech v. Costello*, *supra* note 53.

⁵⁸ *Damcus v. Kelly*, *supra* note 54.

⁵⁹ *Fisher v. Woodward*, 103 Neb. 253, 170 N.W. 907 (1919).

⁶⁰ *Blum v. Voss*, 139 Neb. 234, 297 N.W. 84 (1941).

Conclusion

Although this subject is covered entirely by legislative enactment, a reading of the applicable statute will not adequately reveal who falls within its scope since the court interpretations are so varied that it is impossible to generalize from the policy behind the statute or to infer the answer from holdings on other types of transactions. That confusion should persist in situations which are as old and common as those discussed here seems completely without reasons. Since these are primarily remedial statutes, the courts should give a more liberal interpretation and thus protect as many creditors as the statute will permit. The following table illustrates the lack of uniformity in the treatment of various creditors under Nebraska's statutes. An overhaul of the statutes by the legislature for the purpose of uniformity and clarity seems to be the plausible solution for this difficult problem.

ROBERT H. BERKSHIRE, '55

Transaction	Date Enacted	Status of the Creditor	Time of Becoming A Creditor	Good Faith
SALES §36-204	1866	Lien by levy or judicial process before delivery of possession	While goods are in possession of the vendor-debtor	Immaterial
CHattel MORTGAGE §36-204 §36-301	1866	Lien by levy or judicial process before delivery of possession or recording	While goods are in possession of the mortgagor-debtor	Immaterial
CONDITIONAL SALE §36-207	1877	Prior creditors must have lien by levy before change of possession or recording. Existing creditors may acquire their lien afterward.	Prior or during possession of goods	Good faith required
MOTOR VEHICLES §60-110	1939	Probably a lien by execution.	Probably immaterial	Probably immaterial
FRAUDULENT CONVEYANCES §36-401	1866	General creditor if harmed	Existing at time of conveyance, or subsequent if debt was contemplated	Immaterial
TRUSTS §36-201	1866	General creditor	Existing or subsequent to transfer	Immaterial
BULK SALES §36-501	1907	General creditor	Existing at time of sale, or those to whom he is expected to owe	Immaterial if not through the statutory procedure